United States Department of Labor
Employees' Compensation Appeals Board

R.J., Appellant	)	
and	)	**Docket No. 11-929**
	)	**Issued: November 15, 2011**
DEPARTMENT OF HOMELAND SECURITY, DEPARTMENT OF TRANSPORTATION SECURITY, Jamaica, NY, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 3, 2011 appellant filed a timely appeal from the February 17, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) concerning a schedule award. Pursuant to the Federal Employees' Compensation Act (FECA)[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he has more than a two percent permanent impairment of his left leg, for which he received a schedule award.

FACTUAL HISTORY

OWCP accepted that on October 19, 2006 appellant, then a 44-year-old transportation security screener, sustained derangement of the anterior horn of his lateral meniscus and

[1] 20 C.F.R. § 8101 *et seq.*

contusions of multiple sites, not elsewhere classified. On April 21, 2008 he underwent arthroscopic surgery on his left knee. The procedure was authorized by OWCP.

In a January 4, 2010 report, Dr. Michael J. Katz, an attending Board-certified orthopedic surgeon, described appellant's medical history and reported the findings of his examination of appellant, including his left leg. He stated that, according the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (6th ed. 2009), appellant had a 10 percent permanent impairment of his left leg. Dr. Katz noted, "There is a 1 percent impairment for the lower back according to [c]lass 1 with adjustment -1, impairment [c]lass 1, [g]rade B."

Appellant filed a claim for a schedule award due to his October 19, 2006 injury and OWCP determined that Dr. Katz' impairment rating was in need of further clarification.[2] In a June 1, 2010 report, Dr. Katz provided some additional details of his impairment rating by mentioning Table 16-3, Table 16-5, Table 17-1 and Table 17-2 and indicating that appellant had a grade modifier of 1 under Table 16-23. He concluded that appellant had a 10 percent permanent impairment of his left leg.

OWCP asked Dr. Robert Y. Pick, a Board-certified orthopedic surgeon, to review the medical evidence of record, including the reports of Dr. Katz and provide an impairment rating. In a report dated July 14, 2010, Dr. Pick concluded that appellant had a two percent permanent impairment of his left leg based on a diagnosis-based evaluation for his partial meniscus tear under Table 16-3 (Regional Knee Grid) on page 509 of the sixth edition of the A.M.A., *Guides*. He indicated that under Table 16-3 appellant's meniscus condition fell under class 2 with a default value of two percent. Dr. Pick chose values for the grade modifier for Functional History (GMFH), grade modifier for Physical Examination (GMPE) and grade modifier for Clinical Studies (GMCS) and then applied the Net Adjustment Formula. He indicated that this resulted in a move one space to the left which still yielded a two percent impairment rating for appellant's left leg.

In an August 11, 2010 decision, OWCP granted appellant a schedule award for a two percent permanent impairment of his left leg. The award was based on the July 14, 2010 report of Dr. Pick.

Appellant submitted a November 2, 2010 report, from Dr. John W. Ellis, an attending Board-certified occupational medicine physician, who determined that appellant had a 62 percent permanent impairment of his left leg under the sixth edition of the A.M.A., *Guides* which was comprised of a 20 percent impairment due to peripheral L5 and S1 nerve deficits (under Table 16-12 on page 535) combined with a 42 percent impairment due to decreased left knee motion (under Table 16-23 on page 549). As an alternative to the 42 percent impairment rating due to decreased left knee motion, Dr. Ellis posited that appellant had a 32 percent impairment comprised of the combination of a 25 percent impairment for lateral collateral and anterior cruciate ligament laxity (Table 16-3 on page 510); a 3 percent impairment for meniscectomy

[2] In a May 29, 2009 report, Dr. Mark G. Grossman, an attending orthopedic surgeon, determined that appellant had a 30 percent impairment of his left leg. However, he did not provide any indication that he applied the A.M.A., *Guides*.

(Table 16-3 on page 509); and a 7 percent impairment for tibial fracture and patellar chondromalacia (Table 16-3 on page 510).

In a February 17, 2011 decision, OWCP affirmed the August 11, 2010 decision, finding that appellant did not establish more than a two percent permanent impairment of his left leg. It found that the November 2, 2010 report of Dr. Ellis was of diminished probative value because the impairment ratings were based on conditions that were not related to the October 19, 2006 work injury or not shown to have preexisted it.

LEGAL PRECEDENT

The schedule award provision of FECA[3] and its implementing regulations[4] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.[5] For OWCP decisions issued on or after May 1, 2009, the sixth edition of the A.M.A., *Guides* (6th ed. 2009) is used for evaluating permanent impairment.[6] It is well established that in determining the amount of a schedule award for a member of the body that sustained an employment-related permanent impairment, preexisting impairments of the body are to be included.[7]

In determining impairment for the lower extremities under the sixth edition of the A.M.A., *Guides*, an evaluator must establish the appropriate diagnosis for each part of the lower extremity to be rated. With respect to the knee, the relevant portion of the leg for the present case, reference is made to Table 16-3 (Knee Regional Grid) beginning on page 509.[8] After the Class of Diagnosis (CDX) is determined from the Knee Regional Grid (including identification of a default grade value), the Net Adjustment Formula is applied using the (GMFH), (GMPE) and (GMCS). The Net Adjustment Formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[9] Under Chapter 2.3, evaluators are directed to provide reasons for their impairment

[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404 (1999).

[5] *Id*.

[6] *See* FECA Bulletin No. 9-03 (March 15, 2009). For OWCP decisions issued before May 1, 2009, the fifth edition of the A.M.A., *Guides* (5th ed. 2001) is used.

[7] *See Dale B. Larson*, 41 ECAB 481, 490 (1990); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3.b. (June 1993). This portion of OWCP procedure provides that the impairment rating of a given scheduled member should include "any preexisting permanent impairment of the same member or function."

[8] *See* A.M.A., *Guides* 509-11 (6th ed. 2009).

[9] *Id.* at 515-22.

rating choices, including choices of diagnoses from regional grids and calculations of modifier scores.[10]

ANALYSIS

OWCP accepted that on October 19, 2006 appellant sustained derangement of the anterior horn of his lateral meniscus and contusions of multiple sites, not elsewhere classified. On April 21, 2008 appellant underwent arthroscopic surgery on his left knee. The procedure was authorized by OWCP.

The Board finds that appellant did not submit sufficient medical evidence to establish that he has more than a two percent permanent impairment of his left leg, for which he received a schedule award.

OWCP based the schedule award for a two percent permanent impairment of appellant's left leg on a July 14, 2010 report of Dr. Pick, a Board-certified orthopedic surgeon. The Board finds that Dr. Pick is the only physician of record who properly applied the standards of the sixth edition of the A.M.A., *Guides* to rate appellant's left leg impairment. Dr. Pick properly evaluated the examination findings of Dr. Katz, an attending Board-certified orthopedic surgeon, in reaching his impairment rating.

Dr. Pick concluded that appellant had a two percent permanent impairment of his left leg based on a diagnosis-based evaluation for his partial meniscus tear under Table 16-3 (Regional Knee Grid) on page 509 of the sixth edition of the A.M.A., *Guides*. He advised that under Table 16-3 appellant's meniscus condition fell under class 2 with a default value of two percent. Dr. Pick chose values for the grade modifiers for functional history, physical examination and clinical studies and then applied the Net Adjustment Formula.[11] He indicated that this resulted in a move one space to the left which still yielded a two percent impairment rating for appellant's left leg.

In a November 2, 2010 report, Dr. Ellis, an attending Board-certified occupational medicine physician, determined that there was a 62 percent permanent impairment of appellant's left leg under the sixth edition of the A.M.A., *Guides.* This rating was comprised of a 20 percent impairment due to peripheral L5 and S1 nerve deficits (under Table 16-12 on page 535) combined with a 42 percent impairment due to decreased left knee motion (under Table 16-23 on

[10] *Id.* at 23-28.

[11] *See* A.M.A., *Guides* 516, 517 and 519, Tables 16-6, 16-7 and 16-8.

page 549).[12] The Board finds that this rating is of little probative value because all of the impairments used in the ratings, except for the left meniscus rating,[13] were based on conditions that are not related to the October 19, 2006 work injury or established to have preexisted it.[14]

Appellant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he has more than a two percent permanent impairment of his left leg, for which he received a schedule award.

[12] As an alternative to the 42 percent impairment rating due to decreased left knee motion, Dr. Ellis posited that appellant had a 32 percent impairment comprised of the combination of a 25 percent impairment for lateral collateral and anterior cruciate ligament laxity (Table 16-3 on page 510); a 3 percent impairment for meniscetomy (Table 16-3 on page 509); and a 7 percent impairment for tibial fracture and patellar chondromalacia (Table 16-3 on page 510).

[13] Dr. Ellis provided a three percent impairment rating for meniscus tear, whereas Dr. Pick provided a two percent impairment rating. However, he did not describe what grade modifiers he used to reach this conclusion and his opinion on this condition is of diminished probative value for this reason.

[14] Furthermore, the A.M.A., *Guides* provide that in most cases only one diagnosis in a region will be appropriate and that ratings for range of motion cannot be combined with other approaches. A.M.A., *Guides* 497.

ORDER

IT IS HEREBY ORDERED THAT the February 17, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 15, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board